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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,587	09/30/2003	Paul J. Bobrowski	PHMC0745-021	5390

26948 7590 12/12/2005

ELLIS & VENABLE, PC  
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PHOENIX, AZ 85003

EXAMINER
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MCCORMICK EWOLDT, SUSAN BETH

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/674,587	<b>Applicant(s)</b> BOBROWSKI, PAUL J.	
	<b>Examiner</b> S. B. McCormick-Ewoldt	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10 and 20-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

The amendment of September 30, 2005 is hereby acknowledged.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant has elected Group I **without** traverse in the reply filed on March 10, 2005.

Claims 11-19 have been withdrawn from further consideration.

**Status of Application**

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1655.

**Claims Pending**

Applicant has cancelled claim 3 and added claims 20-29. Claims 1-2, 4-10 and 20-29 are pending.

**Claim Rejections - 35 USC § 103**

Claims 1-2, 4-10, 20-29 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Tempesta (US 5,494,661) and Nkiliza (US 5,928,646) as stated previously in the prior Office action.

Tempesta (US 5,494,661) discloses extracting proanthocyanidins from *Croton* species (column 8, lines 25-27). The *Croton* latex was subjected to partitioning by ethyl acetate and water (column 10, lines 38-39). It was also extracted with isopropanol and evaporated to dryness by in vacuo (column 13, lines 45-56). Tempesta also disclose the wavelength range between from 202 nm to 600 nm (column 1-3). Tempesta does not disclose using a drying agent such as magnesium sulfate or sodium sulfate.

Nkiliza (US 5,928,646) disclose extracting proanthocyanidins using ethyl acetate and drying agents such sodium sulphate and magnesium sulphate and the evaporation step is carried by lyophilization (column 1, lines 12-14; column 3, lines 4-10, 17-18).

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Applicant's arguments filed September 30, 2005 have been fully considered but they are not persuasive.

**Applicant argues** that Applicant has disclosed a process for concentrating the organic lipophilic constituents not hydrophilic components and thus teaches away from Applicant's invention. This is not found persuasive because even if the method was not the particular one carried out, it shows that the method was being done in the prior art and one skilled in the art would be motivated to attempt separate the lipophilic components from the hydrophilic components and retain the lipophilic components because of the beneficial properties of the lipophilic components such as being able to be absorbed more readily.

Therefore, the rejection is deemed proper and is maintained.

Claims 1-2, 4-10, 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tempesta (US 5,494,661), Nkiliza (US 5,928,646) and WO 00/47062.

The rejections of Tempesta and Nkiliza are discussed *supra*.

WO 00/47062 discloses obtaining latex from croton species by separating the liquid phase and solid phase with a solvent. WO 00/47062 discloses the use of several different methods of evaporation such as evaporated drying and spray drying. WO 00/47062 also discloses the additional UV absorption between 400 nm to about 500 nm. (see sections 4.1, 4.1.7, 4.1.8.1).

Therefore, a person of ordinary skill in the art would reasonably expect that the solvents and drying agents used in the proanthocyanidin extraction of Nkiliza could be used in the proanthocyanidin extraction of Tempesta as well as the use of several different method of evaporation. Based on this reasonable expectation of success, a person of ordinary skill in the art would be motivated to make these modifications to Tempesta.

#### Summary

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terry McKelvey, can be reached on (571) 272-0775. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

  
12-6-05  
**SUSAN COE**  
**PRIMARY EXAMINER**